Amendment No. <u>3 to SB3901</u>

<u>McNally</u>
Signature of Sponsor

AMEND Senate Bill No. 3901* House Bill No. 3787

by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION ___. Tennessee Code Annotated, Section 67-4-2009, is amended by adding the following language as a new subdivision:

(10)

(A) Except as otherwise provided in subdivision (10)(E), there shall be allowed against the sum total of the taxes imposed by the franchise tax law, compiled in part 21 of this chapter, and by the excise tax law, compiled in this part, a credit equal to fifty percent (50%) of the purchase price of Brownfield property purchased in Tennessee during the tax period covered by the return for the purpose of a qualified development project.

(B) For the purposes of this subdivision (10), unless the context otherwise requires:

(i) “Brownfield property” means real property that is determined by the commissioner of environment and conservation to be abandoned, idled or under-utilized and whose re-use, growth, enhancement or redevelopment is complicated by real or perceived adverse environmental conditions due to contamination by hazardous substances, solid waste, or any other pollutant;

(ii) “Enhanced capital investment” means a business investment in real property, tangible personal property or computer software owned or leased in this state valued in accordance with generally accepted accounting principles. An enhanced capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction;

(iii) “Investment period” means a period not to exceed five (5) years from the filing of the business plan related to the required capital investment, during which the required capital investment must be made;

(iv) "Non-prime agricultural property" means real property included within the United States Department of Agriculture land capability classification Classes IV, V, VI, VII and VIII; and

(v) "Qualified development project" means a project consisting of a capital investment of at least twenty-five million dollars ($25,000,000), utilizing at least five (5) acres of Brownfield property, or non-prime agricultural property as provided in subdivision (10)(F), and having a business plan approved by the commissioner of economic and community development in accordance with the applicable provisions of subdivision (10)(F).

(C) The credit allowed pursuant to this subdivision (10) may be taken on any franchise and excise tax return but shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by the return before the credit is taken.

(D) Except as provided in subdivision (10)(G), a credit authorized under this subdivision may be used in the tax year it is authorized or in any tax year thereafter and any used credit may be carried forward; provided that the credit, or any unused amount remaining, shall expire fifteen (15) tax years from the tax year in which the credit was authorized.

(E) If the taxpayer makes an enhanced capital investment equal to or in excess of two hundred million dollars ($200,000,000) during the investment period for the qualified development project, the credit allowed in subdivision

(10)(A) shall be equal to seventy-five percent (75%) of the purchase price of the Brownfield property or non-prime agricultural property purchased in Tennessee for the purpose of the project.

(F)

(i) The taxpayer shall file a business plan for the development project with the commissioner of economic and community development in order to qualify for the credit provided in subdivision (10)(A) or the enhanced credit provided in subdivision (10)(E).

(ii) For purposes of the enhanced credit, the business plan shall be filed on or before the last day of the first fiscal year in which the investment is made and shall describe the enhanced capital investment.

(iii) Qualifying plans shall be approved by the commissioner of economic and community development. At such time, an approval letter authorizing the credit, the value of the credit and the terms of the credit shall be issued. A copy of the approval letter shall be filed by the taxpayer with the department of revenue in any year in which the taxpayer utilizes the credit.

(iv) The commissioner of economic and community development has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the findings contained within the business plan and to determine that the taxpayer has complied with all statutory requirements so as to be entitled to the credit in this subdivision (10).

(G) The enhanced credit provided in subdivision (10)(E) shall begin to apply in the first year of the investment period as provided in the business plan; however, if the enhanced capital investment is not met during the investment period, the taxpayer shall be subject to an assessment equal to the amount of any credit taken under this subdivision (10) for which the taxpayer failed to qualify, plus interest.

(H) The aggregate amount of the credits allowed to all taxpayers under this subdivision (10) shall not exceed ten million dollars ($10,000,000) in any one (1) tax year; provided that in any tax year in which it is determined that credits remain available, the commissioner of economic and community development may, in consultation with the commissioner of agriculture, open availability to qualified development projects utilizing non-prime agricultural property. Credits for projects utilizing non-prime agricultural property shall be issued in the same manner and under the same terms as credits allowed for projects utilizing Brownfield property except that all business plans for such projects shall be approved by the commissioner of agriculture in addition to the commissioner of economic and community development.

(I) Notwithstanding any provision of this subdivision (10) to the contrary, no credit shall be allowed unless the commissioner of economic and community development determines, in the commissioner's sole discretion, that the credit is in the best interest of the state. For purposes of this subdivision, "best interest of the state" means a determination by the commissioner of economic and community development that the project is a result of the credit provided in this subdivision.